



# Nevada Farm Bureau Federation

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December 11, 2018

## Nevada Farm Bureau Comments To Proposed Mitigation Regulations For The Nevada Conservation Credit System

Nevada Farm Bureau is offering these comments to be included as input to the development of the Sagebrush Ecosystem Council's proposed regulations. We understand that these regulations will cover the use of the Nevada Conservation Credit System and a mitigation program for conserving sagebrush habitat.

Nevada Farm Bureau policy supports Nevada's Greater Sage Grouse Conservation Plan and believes that it should be used by the federal land management agencies – or at the very least been included in the National Environmental Policy Act (NEPA) evaluation process for what the federal land management plans should be. Our support for development of a Nevada-driven conservation plan, including our support for local conservation plans, goes back to the beginning of the process which launched Nevada's involvement and various stages that have brought us to where we are today.

Nevada Farm Bureau policy further calls for the use of incentive-oriented programs to involve private property owners in conservation efforts, while providing protections of property rights.

Within this context and based on experiences of the past several years we wish to express here various specific concerns we have in going forward with the adoption and implementation of this proposed regulatory package.

1. With the adoption of the 2015 Land Management Plan Amendments by both the U.S. Forest Service and the Bureau of Land Management, Nevada's Sage Grouse Conservation Plan became a dead letter. The federal agencies working with other partners came up with their own, top-down plan and instituted their agenda of land control measures to limit and further restrict uses of federal lands.

In spite of giving lip-service to the real risk of wildfire, the consequences of their plans upon tiered plans and no real on-the-ground management has resulted in over 1.2 million acres of priority Sage Grouse habitat becoming charcoal this past summer. As each agency went through a reconsideration process of their 2015 Land Use Plans and regardless of efforts to urge greater attention be given to dangerous fuel loads – nothing has been instituted to correct the deficiencies that evidence has made clear as land/resource management failures.

In Nevada Farm Bureau's public comments to both the BLM and U.S. Forest Service process for revisiting their 2015 Land Use Management Plans, we stressed our support for the consideration of the Nevada Conservation Plan and urged it be considered as a preferred option. The purpose of the rewritten federal plans seem to be mostly focused on keeping as much of the federal agencies' agendas as possible, while making it seem that they have conferred more closely with the State and somewhat touched the intentions of the Nevada Plan.

Although Utah's Conservation Plan was included in what the U.S. Forest Service has included in their Draft Environmental Impact Statement, Nevada's Conservation Plan has not been given this type of consideration. Elements of the Nevada Plan have perhaps been incorporated through the input that Sagebrush Ecosystem Council has offered in the public comment process, but we would anticipate only minor adjustments in what came down from Washington, D.C. in 2015.

2. The use of the Nevada Conservation Credit System and the state's authority for mitigation requirements appear to be one of the concepts that the federal land management agencies might embrace. This application of state authority for mitigation, while neglecting other aspects of the Nevada Conservation Plan, appears to be mostly based on the actions taken by the U.S. Department of Interior to clarify policy that neither the Bureau of Land Management or the U.S. Fish and Wildlife Service have the authority to require mitigation in this set of circumstances.

Reviewing the documentation that was provided with this Notice of Workshop, we highlighted the comment offered to the boilerplate question of the need for and purpose of the proposed regulation. In part, the response offered the background that the consideration by the U.S. Fish and Wildlife Service's determination to not list the Greater Sage Grouse was related to the regulatory assurances that were in place to stem the decline of habitat loss. As we've seen from this summer's experience with wildfire, the federal agency's plans have not had much of an impact on the 1.2 million acres that were burned because of unmanaged fuel loads.

The consideration of Nevada's regulatory mitigation system draws attention to the significance of how this proposal for extracting mitigation will improve or protect sagebrush habitat in the overall context of the other impacts being caused by lack of meaningful federal land management.

We have to ask how this regulatory proposal fits into the U.S. Fish and Wildlife Service's mandate for making certain that the Nevada mitigation requirement constitutes sufficient regulatory assurance.

We see a very telling tale for caution as we have witnessed with the recent developments in regard to the Bi-State Sage Grouse. That area and their Conservation Plan was far more significant for on-the-ground conservation efforts and meaningful actions by land owners. A number of landowners encumbered their private property with easements as contributions to the protection of Sage Grouse habitat. These committed sets of conservation actions were ignored and the magistrate's decision reversed the status of the Bi-State Sage Grouse as not warranted for listing as Threatened.

The paperwork that we reviewed didn't cover how the state's proposed regulation for mitigation would connect with the federal agencies and their authority for controlling what happens – or doesn't happen on the federal lands that they exert their control. We would assume that some Memorandum would be put in place to connect the authority that Nevada is providing to be used by the federal agencies who are prohibited by their authority to require mitigation? We pose that as a question because we believe that if this is the case, it needs to be clearly spelled out and that the Nevada Sagebrush Ecosystem Council needs to be involved in the process of negotiating the details of the Memorandum with the federal agencies.

3. Our mention of the authority and responsibility for the Nevada Sagebrush Ecosystem Council draws attention to another area of concern. The impression is given that the Sagebrush Ecosystem Council is the responsible authorities for the operations of these mitigation requirements.

We consider that based on state law, they should be the authority, but it seems that in past negotiations with federal agencies they have been iced out by others within the state structure who cut whatever deals were made and agreements consented to. From our perspective, these deals have frequently ignored the Nevada Sage Grouse Conservation Plan and pursued an agenda that hasn't been in line with that Sage Grouse Conservation Plan.

In a couple of references to the adoption of the regulations it is noted that “the agency” won’t incur any additional cost for the operations of the program. Does “the agency” mean the Nevada Sagebrush Ecosystem Council?

If the authority is the Nevada Sagebrush Ecosystem Council, we maintain that additional authority and responsibility rightfully belongs with them and this shouldn’t be undercut by other authorities working at cross-purposes to the Nevada Conservation Plan.

Again, we repeat the contention that whatever required agreements and Memorandums for using the Nevada mitigation plan as the means for federal agencies to enforce authority that they don’t otherwise legally have -- the Nevada Sagebrush Ecosystem Council should be at the negotiating table, leveraging the opportunity for greater use of the Nevada Conservation Plan.

4. In whatever follow-up Memorandum and agreements that are determined by the Nevada Sagebrush Ecosystem Council and the involved federal agencies, we believe that there needs to be assurances provided which offer protections that the current system seems to lack.

Again, referring attention to the Bi-State Sage Grouse situation, regardless of how much effort is placed on doing the right thing with applied, meaningful conservation...federal agencies still do what they do and courts can rule whatever they think applies.

We’re told, in the paperwork to advocate for the development of the regulations, in the section pertaining to “*...immediate and long-term effects:*” “*...that the regulation will improve upon efforts to avoid a sage-grouse listing, which would likely have significant detrimental impacts to ranchers, ranching communities, agriculture and other industries.*”

It is our contention that as a non-listed Endangered Species Act species, Sage Grouse already have had significant detrimental impacts, with major efforts to enforce requirements for avoiding listing. At what point does the line get crossed where the cure is worse than the problem?

Provisions for the agreements/Memorandum are necessary to stipulate that if a U.S. Fish and Wildlife Service decision was to occur to list the Greater Sage Grouse under the provisions of the Endangered Species Act, the Nevada mitigation regulations would be terminated and landowners who have participated in committing to provide credits for the Nevada Conservation Credit System would be released from their requirements, without retribution or other consequences. We further maintain that those participating in providing conservation measures with their private property should be automatically given the protections provided for in the Endangered Species Act system for Conservation Agreements With Assurance.

5. In regard to the Small Business Impact Statement, we believe that a more comprehensive consideration is necessary for evaluating the impact. A survey sent to 66 businesses with five responses is not sufficient. As the regulations become more developed and there are actual implications that can be evaluated, impacts will become better known.

We also believe that the details of how many acres of state lands and where these lands are located need to be identified. Some disturbance of habitat on these lands somewhat unknown it is difficult to assess the degree of impact.

In providing the information associated with this impact, we believe that further information is also necessary in understanding the level of “voluntary” mitigation that is referred to in how current proponents are carrying out mitigation for disturbance on federal lands. If this level of mitigation is achieving the necessary results for offsetting disturbances – without forced requirements – why does there need to be required mitigation through the authority of Nevada being used for regulatory assurances that federal agencies don’t have the authority to require?

**In Conclusion:**

While our comments and views at this point do not support the provisions we are aware of in the outline offered for proposed regulations, we do consider that if there are to be regulations of this type – they rightfully belong to the authority of the Nevada Sagebrush Ecosystem Council. We also believe that far more extensive inclusion of Nevada’s Sage Grouse Conservation Plan need to implemented in federal land management agency actions.

Nevada’s partnership for the benefit of Greater Sage Grouse and sagebrush ecosystems, with federal land management agencies and the U.S. Fish and Wildlife Service, need to recognize more equal status and the needs of Nevada citizens. Cooperation and meaningful enhancement of habitat is not served with more iron-fisted regulatory requirements or stipulations, especially when there are not any consequences for the federal agencies who fail to live up to their responsibilities limiting wildfire and managing Wild Horses and Burros at appropriate levels.

We look forward to further engagement in finalizing the details for the regulations that apparently will be brought forward.

Thank you for consideration of our ideas for development of the regulations you are planning to create and require.

Sincerely



Doug Busselman, Executive Vice President  
Nevada Farm Bureau